



City of Marietta

205 Lawrence Street
Post Office Box 609
Marietta, Georgia 30061

Meeting Minutes BOARD OF ZONING APPEALS

J. K. Lowman, Ward 2, Chairman
James A. Mills, Ward 3, Vice Chairman
Brad N. Leskoven, Ward 1
David Hunter, Ward 4
Ronald Clark, Ward 5
Bobby Van Buren, Ward 6
Justice Barber, Ward 7

Monday, March 30, 2015

6:00 PM

City Hall Council Chambers

*Present: J. K. Lowman, Ronald Clark, Justice Barber, Brad N. Leskoven,
David Hunter, James Mills and Bobby VanBuren*

Staff:

Rusty Roth, Development Services Manager
Daniel White, City Attorney
Ines Embler, Secretary to the Board

CALL TO ORDER:

Mr. Lowman called the March 30, 2015 meeting of the Board of Zoning Appeals to order at 6:02PM

MINUTES:

20150208 February 23, 2015 Board of Zoning Appeals Meeting Minutes

Review and Approval of the February 23, 2015 Board of Zoning Appeals Meeting Minutes.

Mr. Leskoven made a motion, seconded by Mr. Clark, that the February 23, 2015 Board of Zoning Appeals meeting minutes be approved. The Motion carried 7-0.

A motion was made by Board member Leskoven, seconded by Board member Clark, that this Minutes be Approved and Finalized . The motion CARRIED by the following vote.

Absent: 0

Vote For: 7

VARIANCES:

20150198 V2015-11 [VARIANCE] THE POORTER GROUP, LLC (DAVID AND BRITTANY BOTTOMS)

V2015-11 [VARIANCE] THE POORTER GROUP, LLC (DAVID AND BRITTANY BOTTOMS) requesting variances for property located in Land Lot 02490, District 20, Parcel 0290, 2nd Section, Marietta, Cobb County, Georgia and being known as 1040 Greymont Circle. Variance to increase the allowable height for a gate to 5 ft. and two columns to 6 ft. Ward 4C.

A public meeting was held.

Mr. Hicks Poor, representing the applicant, presented a request for a variance to increase the allowable height for a gate to 5 ft. and two columns to 6 ft.

Mr. Poor informed the Board Members that Mr. Bottoms sent out twenty letters to his neighbors and received positive feedback from two of those neighbors. He indicated that the Bottoms will adjust the drawing so that the keypad is 20 feet from the right of way and are agreeable to the City's request to get a land disturbance permit.

Ms. Justice asked if the intent was for the gates to open towards the street as opposed to in and if so what was the reason. Mr. Poor stated the reason was due to the slope of the driveway.

Mr. Lowman asked what distance did they propose the posts be set back from the highway. Mr. Hicks explained that the keypad would be 20 feet from the right away and the posts would be at about 14 feet from the keypad.

Ms. Justice clarified the keypad and posts distances and asked that if the variance was approved would they be agreeable with the stipulation that the keypad be 20 feet from the right away and Mr. Hicks responded in agreement.

Mr. Lowman inquired about the 20 letters that the property owner sent out. Two came back in favor and he asked if there was any response from the other 18 owners. Mr. Hicks said they did not receive responses from the other 18 property owners.

There was no opposition to this variance.

The public hearing was closed.

A motion was made by Mr. Hunter to grant the application with the stipulation that the keypad will be installed twenty (20) feet from the right of way, on the basis that it would not be detrimental or injurious to the property or the improvements in the vicinity of the development or to the public health, safety or general welfare. It was seconded by Mr. Van Buren

The Motion carried 7-0.

A motion was made by Board member Hunter, seconded by Board member Van Buren, that this Variance be Approved as Stipulated . The motion CARRIED by the following vote.

Absent: 0

Vote For: 7

20150199

V2015-12 [VARIANCE] AMY J. HOLLAND & DANA N. MARTIN

V2015-12 [VARIANCE] AMY J. HOLLAND & DANA N. MARTIN
requesting variances for property located in Land Lots 324 & 325, District 20, Parcel 1450, 2nd Section, Marietta, Cobb County, Georgia and being known as 1141 Whitlock Avenue. Variance to reduce the buffer from 30' to 0.' Ward 3A.

A public meeting was held.

Mr. Stewart O'Dell, representing the applicant, presented a request for a variance to reduce the buffer from 30' to 0.'

Mr. O'Dell explained the difficulties in building on this particular lot and explained the reasons for requesting the variance. He stated that even though the request is for a zero setback, that they were actually looking at 15 feet setback and the other 15 feet would be used for a landscape buffer. He reiterated that they are not asking for a zoning change, only a variance, therefore they are within the allowable use of the tenant's proposed use.

Mr. Mills asked for clarification on the statement for 15' to 15' versus 30' to 0'. Mr. O'Dell explained that they are not wanting to build all the way to the property feet, they plan to have a 15' buffer and a 15' building setback.

Mr. Mills asked what type of landscape buffer they are considering and Mr. O'Dell replied that they are looking at evergreens and bushes along the back row.

Mr. Hunter asked if that would be enough to cover two stories and Mr. O'Dell said they were looking at two story and that there was a little section with a third story. He explained the topography of the lot and how the building would be three story but only appear as two story from the street.

Mr. Lowman asked if he was referring to Old Dallas Road and Mr. O'Dell stated that he was speaking about Whitlock Avenue.

Mr. Lowman asked what it would look like on the back for the homeowners behind the lot. Mr. O'Dell said they would be building up the land and would probably be building a retaining wall that would be 8-9 feet and then putting a fence on top of that creating a 12-13 feet barrier.

Mr. Van Buren asked if the rear area where they are putting the buffer was where the homes are and Mr. O'Dell affirmed it.

Mr. Lowman asked how much visual screening for the homes behind the buffer would there be. Mr. O'Dell said they would see a row of trees and bushes that would be hidden by retaining wall and fencing.

Ms. Barber asked if he had any printouts of the landscape architect plans for the site. Mr. O'Dell stated that they do not currently have plans, that everything is still preliminary. He stated that they needed to see if the variance was approved before they could prepare plans.

Mr. Leskoven asked where would the retaining wall be built relevance to the property line and Mr. O'Dell said about 15 feet from the property line.

Mr. Van Buren asked about drainage in relation to the retaining wall. Mr. O'Dell explained that a lot of water was currently coming in from across the street in an underground pipe and that there was an open grate by the back of the property line that backs up to the residential area. He stated that they plan on connecting the pipes during construction to avoid water overflowing to the neighbors.

Mr. Mills expressed concern over the line of sight from the neighbors section and asked what the elevation was compared to the elevation of the houses. Mr. O'Dell explained what the homeowners would be viewing from a first story and a second story house.

Mr. Van Buren asked about the trees on the drawing that the board was presented with and asked if they were planting them as well or if they were just for visuals on the drawing. Mr. O'Dell said they are planning on putting some time of evergreen trees along the back of the building.

Mr. Leskoven asked if the landscape buffer was going to go right up to the property line and Mr. O'Dell affirmed.

Ms. Barber asked for confirmation that they do not have anything other than what was presented to the board in the packet and Mr. O'Dell confirmed that what the board members have is the only documents currently available.

Mr. Mills commented that looking at a straight line view in the site development plan, from where the window would be in a house, a homeowner would be able to see the top story of the proposed building. Mr. O'Dell explained that the retaining wall and fence would be in that back area.

Mr. Leskoven asked if there would be any additional landscaping buffer on the parking lot level as well and Mr. O'Dell said there would be landscaping around the building itself.

Mr. Van Buren asked if the houses in the back face the back of the building and Mr. O'Dell stated that the backs of the houses face the back of the proposed building.

There were eight (8) in opposition to this variance.

Mr. Ed Parker lives at 330 Hickory Walk and spoke for the residents of Hickory Walk Subdivision, just east of the parcel requesting the variance. He commented regarding the recommendations of the Staff and expressed concern over the grading requirements of the property requesting the variance.

Mr. Michael Osburn lives at 169 Brighton Court. He stated concerns over the 30' foot variance and explained how it would affect their property values. He also expressed concerns over the drainage problems. He stated that his aunt put in the junction box that is being referenced.

Mr. Lowman asked where the water runs off of his property now and Mr. Osburn explained how the water runs off the property and stated that he paid for the junction box that his aunt installed. Mr. Mills asked if he also paid for the pipe and he did not know who paid for the pipe. Mr. Mills asked if there were any easements on his property or any of the other properties where the line is and Mr. Osburn said that there was none on his property that he was aware of and that the other properties signed a right of use for the pipe to go through their property.

Mr. Jack O'Hanlan lives at 120 Hickory Walk. He amplified the comments already stated by others and added that this parcel is really more of a remnant than a parcel. He feels the owner very likely got compensated for the City taking his right away when Whitlock was widened and feels that asking for a variance now is basically double dipping at the trough because they've already been compensated for turning this into a remnant of land. He detailed how steep the land is and how a retaining wall would be affected by the steep topography. He expressed concern over the drainage issues and the fact that the applicant doesn't currently have any storm water plans.

Mr. Van Buren asked where Hickory Walk is in relation to the building and Mr. O'Hanlan responded that Hickory Walk is the subdivision immediately to the east and to the south of the property.

Mr. David Esterline lives at 179 Brighton Court, which is directly behind the applicant's property. He expressed shock and concern over the Staff's recommendation to approve variance with the stipulation that there'd only be a buffer reduction of 15 feet as the required buffers between residentially zoned properties are primarily there to protect the safety and noise from the residents. He feels the variance request reduces all of the stated reasons for a buffer and would decrease property values. He also expressed concern that the appropriate site planning has not fully been done with regards to emergency vehicles and sanitation trucks.

Ms. Pamela Coan owns the property at 173 Brighton Court, which is also directly adjacent to the property. She stated that it would be her fence line that they want to landscape right up against. She is making an emotional plea to be allowed to keep her peace and solitude in her back yard and not look at a 30 foot retaining wall and at least have a buffer zone that she feels she is due for making her place her own and being a long time resident of the city. Mr. Lowman clarified that the retaining wall would not be 30 feet but that it would certainly be overlooking her property.

Ms. Christi Roberts stated that her mother lives at 170 Brighton Court, which is immediately adjacent to the drainage issue that Mr. Osburn was speaking of. She feels that the rear view of the proposed building is going to be an eyesore once they add dumpsters and whatever refuse they want to hide behind the building.

Ms. Lisa Roberts lives at 170 Brighton Court and expressed concern over the consequence of clear cutting the trees in the proposed site. She said that they have lived there for over twenty years and prior to the Marietta High School construction, they never had flooding issues. She stated that once the land for the school was clear cut, they immediately were flooded afterwards.

Mr. Clark asked if she believed she would be getting a lot more water if all of those trees were taken down and she said absolutely yes and reiterated that they never had flooding issues prior to the Marietta High School going in.

Mr. Charles (Chuck) Gussenberger lives at 60 Hickory Walk. He feels their quality of life will diminish if the variance is granted. He explained that they already gave up over 3,000 square feet of right of way when the City widened the road to make room for the high school. He feels that because his property sits higher up, that the proposed height of the retaining wall would be not be high enough for him to not be able to look over it. He also expressed concern over trees not being taken care and dying, which he feels would mean that he would have to replace the dead trees.

Ms. Christi Roberts spoke again and demonstrated an application on her phone that she used on her way to the meeting that measures the distance and altitude. The application showed that her property sits in the valley of a very steep landscape and the property in the application is at the top. She detailed the distances between the properties in relation to the steep terrain.

Mr. Esterline spoke again and stated that the section that was included in the package wrongly depicts the size of the townhomes. He said there are some one story, some two story and some almost three story, therefore his child's window would be looking straight out at the back wall.

Mr. O'Dell rebutted the concerns of the opposition and explained that they plan to back fill approximately 8 feet of soil in the back so they can get the building up a little higher. He stated that they plan to get under parking drainage so they can try to hold the water onsite and explained how they plan to solve the drainage problem. He stated that they have spoken with the City Fire Department twice and have been working on a solution for ingress/egress of the fire trucks.

Mr. Leskoven asked if the slope was downward from Old Dallas to the parking lot and Mr. O'Dell pointed to the map and explained.

Mr. Lowman asked if his earlier mention of an underground water retention showed on the drawings submitted and Mr. O'Dell said it did not. Mr. Lowman asked if the intention is that there will be underground water retention and he affirmed it.

The public hearing was closed.

A motion was made by Mr. Mills to deny the request. It was seconded by Ms. Barber. The Motion carried 7-0.

A motion was made by Board member Mills, seconded by Board member Barber, that this Variance be Denied . The motion CARRIED by the following vote.

Absent: 0

Vote For: 7

20150200

V2015-13 [VARIANCE] COOPER JONES LLC (JOHNATHAN L. MCMURRAY)

V2015-13 [VARIANCE] COOPER JONES LLC (JOHNATHAN L. MCMURRAY) requesting variances for property located in Land Lot 10840, District 16, Parcel 0360, 2nd Section, Marietta, Cobb County, Georgia and being known as 325 Nelson Street. Variance to allow a guest home to the front of a principal structure. Ward 4A.

A public meeting was held.

The Applicant Roger Balko, of Cooper Jones Construction presented a request for a variance to allow a guest home to the front of a principal structure.

Mr. Balko explained that the guest house currently on the property was built many decades ago is in disrepair and they plan to demolish it and putting in a new structure that matches the finishes and quality of the house that is currently in the property as

well as the homes on Nelson Street now.

Mr. VanBuren asked for the height and size of the current structure. Mr. Balko stated that it is a one story structure and is approximately 1900 square feet.

Mr. Van Buren ask if the new one is planned for 1500 square feet and Mr. Balko said the new one will be 2000 square feet.

Ms. Barber asked if the owners are fully aware that if the variance is granted and they build a new building as proposed in the area, that they understand that there can be no one paying to stay there. That it's clear there are not to be any tenants there. Mr. Balko said that it was abundantly clear and that the owners are in full agreement with that. She also asked if they understood that they would have to get the approval of the County Health Department and Mr. Balko said that they have already started that process with the County.

There was no opposition to this variance.

The public hearing was closed.

A motion was made by Mr. Hunter to grant the application on the basis that it would not be detrimental or injurious to the property or the improvements in the vicinity of the development or to the public health, safety or general welfare. It was seconded by Mr. Mills. The Motion carried 7-0.

A motion was made by Board member Hunter, seconded by Board member Mills, that this Variance be Approved and Finalized . The motion CARRIED by the following vote.

Absent: 0

Vote For: 7

20150201

V2015-14 [VARIANCE] SIDNEY P. WRIGHT, P.C. (STATE MUTUAL INSURANCE CO.)

V2015-14 [VARIANCE] SIDNEY P. WRIGHT, P.C. (STATE MUTUAL INSURANCE CO.) requesting variances for property located in Land Lot 12110, District 16, Parcel 0350, 2nd Section, Marietta, Cobb County, Georgia and being known as 1097 Radar Circle. Variance to operate automobile sales on a parcel that is only 0.65 acres. Ward 7A.

A public meeting was held.

The Applicant Sidney Wright requested that the variance to operate automobile sales on a parcel that is only 0.65 acres be tabled to a later time because when they filed the application they were operating under an assumption which they now believe was erroneous. They believed that the site, which was formerly grandfathered as an automobile lot had lost its' grandfather status. Information has recently come to light that they believe it may yet retain the grandfathered status and would like the opportunity to present that evidence to the board.

There was no opposition to this variance.

The public hearing was closed.

Mr. Lowman made a motion to table this item until next month's meeting. It was seconded by Ms. Barber.

The Motion carried 7-0.

A motion was made by Board member Lowman, seconded by Board member Barber, that this Variance be Tabled . The motion CARRIED by the following vote.

Absent: 0

Vote For: 7

20150197

V2015-15 [VARIANCE] JOE M. PHILLIPS JR.

V2015-15 [VARIANCE] JOE M. PHILLIPS JR. requesting a variance for property located in Land Lot 1006, District 16, Parcel 0240, 2nd Section, Marietta, Cobb County, Georgia and being known as 1040 Park Manor Terrace. Variance to increase the maximum height of an accessory structure from 15 ft. to 22 ft. (setback required to be equal to height of the structure). Ward 4A.

A public meeting was held.

Mr. Chris Phillips, representing the Applicant, Dr. Joe Phillips, presented a request for a variance to increase the maximum height of an accessory structure from 15 ft. to 22 ft. (setback required to be equal to height of the structure).

Mr. Phillips stated that they received ten (10) letters from neighbors in support including a letter from their DA, Dick Reynolds and the Homeowner's Association.

Ms. Barber asked if any of the ten letters in support are from the owners in the rear of the property and Mr. Phillips said no, that they are all from the existing neighborhood.

Mr. Lowman asked for confirmation that none of the letters were from the property owners behind him and Mr. Phillips affirmed it and stated that they do have the builder behind them and that he was welcome to give his comments.

Mr. Lowman asked about a letter that they submitted to the City that the Board has not received. Mr. Phillips was not sure what letter was in question and said he assumed the Board had the recommendation from the City's Community Development and that the Board had read that. Mr. Lowman asked Mr. Roth for clarification.

Mr. Roth explained that the City was under the impression that there was a letter from Mr. Phillip's father outlining the landscaping buffer that was planned, but that the City has not received it. Mr. Phillips said he did not have a letter for that and stressed that these structures and the landscaping were previously done by the developer behind them when the site was developed and that those structures have been permitted and built and that in fact the structure in question has been built as well under the plans that were submitted and approved.

Mr. White stated that what he believes the board was asking was that they have not received the letters in support that he said they have.

Mr. Phillips said he has them with him and can submit them to the board.

Mr. Lowman asked if he's had anybody who is opposed and he said no.

Mr. Lowman asked Mr. Roth if the setback is as it should be in the Ordinance and Mr. Roth agreed.

Mr. Mills asked if Mr. Phillips had approached the two people that own the property behind him and Mr. Phillips stated that Mr. Whit Smith, the developer for those properties behind was present.

Mr. Whit Smith stated that he developed the two acre tract behind Dr. Phillip's house and that he still owns one lot. At Ms. Barber's request he demonstrated to the Board the exact location on the map and said it was the lot directly behind Dr. Phillip's house.

Mr. Lowman asked if he was the builder of the house that does exist back there now and Mr. Smith said no, that T. Anderson Capstone Communities built that house.

Mr. Leskoven asked for clarification that it was 855 that he was referencing and Mr. Smith said yes, that it was 855 Kennesaw Avenue.

Mr. Leskoven asked if 851 was the lot that has been developed on and Mr. Smith affirmed it.

Mr. Smith said he does not have any opposition and that his only wish is that they have eluded to the fact that they are going to have some landscaping working in with the landscaping that he did on his lot, but that he's a family friend and has assured him that it's going to happen.

Mr. Van Buren asked if he meant the landscaping would be high enough to cover the sight line and Mr. Smith said they have holly planted and although he is not a landscape architect, something in between but he doesn't know specifically what will be done.

Mr. Hunter asked if there are specifics in that letter and he said no.

Ms. Barber inquired about the ten letters and Mr. Phillips went ahead and submitted them to the board.

Mr. Leskoven asked for clarification about the length of the property of 855 and if the holly berry ran the length of that parcel and Mr. Smith explained and said that it did.

Ms. Barber asked if it also goes along 851 and Mr. Smith said that it did.

Ms. Barber for specifics about the proposed additional landscaping that they are working on with the invisible fencing company.

Dr. Phillips, the owner of the property stated that he approved and signed a contract with a landscaper to bring in \$5000 worth of trees to put there and they are starting at 10 feet and they are furs. He said the landscaper assures him in three years they will be touching each other. He was unable to answer if they would grow high enough to cover the weather vane.

Ms. Barber asked if the agreement for the \$5000 with the landscaper had already been executed and that if it were a stipulation granting this variance, that he would be

okay with it because he already had a legal obligation. Dr. Phillips said that it was an oral agreement but that he would have no problem with that stipulation.

There was no opposition to this variance.

Mr. Leskoven made a comment that the hollies that are on the other side of the fence that they had not discussed previously are likely going to get tall enough to be a screen on their own, even without the furs or whatever else might be planted on the applicant side of the fence.

Mr. Lowman asked Mr. Smith what type of holly are on the property and it was disclosed that they are Murphy Hollies. Mr. Smith said they were planted last fall and already somewhat mature.

The public hearing was closed.

A motion was made by Mr. Lowman to grant the application with the stipulation that the landscaping referred to by the property owner will be going in and is part of the agreement, on the basis that it would not be detrimental or injurious to the property or the improvements in the vicinity of the development or to the public health, safety or general welfare. It was seconded by Mr. Leskoven.

Mr. Hunter abstained and Mr. Clark and Mr. Mills opposed.

The Motion carried 4-2-1.

A motion was made by Board member Lowman, seconded by Board member Leskoven, that this Variance be Approved as Stipulated . The motion CARRIED by the following vote.

Absent: 0

Vote For: 4

Vote Against: 2

Abstain: 1

ADJOURNMENT:

Mr. Mills made a motion to adjourn, seconded by Ms. Barber. The March 30, 2015 meeting of the Board of Zoning Appeals was adjourned at 7:30PM.


J.K. LOWMAN, CHAIRMAN


INES EMBLER, SECRETARY